

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: ROSZETTA M. McNEILL

ROSZETTA M. McNEILL,

Appellant,

vs.

DAVID RUSKIN, Trustee

Appellee.

Bkrptcy No. 06-42932-MBM
HON. MARCI B. MCIVOR
Case No. 08-CV-10943
HON. GEORGE CARAM STEEH

ORDER DENYING APPELLANT'S MOTION AND CORRECTED MOTION TO FILE
UNTIMELY APPLICATION FOR APPEAL (#12, #15),
DENYING AS MOOT APPELLANT'S MOTION AND CORRECTED MOTION TO
PROCEED INFORMA PAUPERIS (# 11, #14), AND
DENYING AS MOOT APPELLANT'S REQUEST AND
CORRECTED REQUEST FOR AUTOMATIC STAY PENDING APPEAL (#13, #16)

Debtor Roszetta McNeill, appearing pro per, moves for an extension of time to file a notice of appeal challenging the court's April 14, 2008 Order dismissing her appeal for failing to file a timely designation of record. The court denied McNeill's motion for reconsideration of the April 14, 2008 Order on April 30, 2008. McNeill had until May 30, 2008 to file a timely notice of appeal. Fed. R. App. P. 4(a)(1), Fed. R. App. P. 4(a)(4)(A)(vi). McNeill filed her instant motion for an extension of time on August 28, 2008.¹ A party asserting she failed to receive prompt notice of an order she wishes to appeal may seek relief for filing an appeal under either Federal Rule of Appellate Procedure 4(a)(5) or 4(a)(6). Zak v. United States, 133 F.3d 451, 453 (6th Cir. 1998).

Federal Rule of Appellate Procedure 4(a)(5) allows a district court to extend the time

¹ McNeill filed a "corrected" version of the motion on September 2, 2008, as well as "corrected" versions of her August 28, 2008 application to proceed informa pauperis and request for automatic stay pending appeal.

to file a notice of appeal if the party moves for such relief no more than 30 days after the time for filing an appeal under Rule 4(a) expires. Fed. R. App. P. 4(a)(5)(A)(i). McNeill had until June 30, 2008 to move for relief under Rule 4(a)(5). McNeill's August 28, 2008 motion is untimely with respect to relief under Rule 4(a)(5). Bailey v. St. Ambrose Academy, No. 94-1031, 1994 WL 589680, at *1 (6th Cir. Oct. 21, 1994).

Federal Rule of Appellate Procedure 4(a)(6) permits a district court to reopen the time for filing an appeal only if: (1) the court finds the moving party did not receive notice of entry of the order to be appealed from within 21 days; (2) the motion is filed within 180 days after the order is entered or within 7 days after the moving party receives notice of the order, whichever is earlier; and (3) the court finds no party would be prejudiced. Fed. R. App. P. 4(a)(6). McNeil asserts in her motion and "corrected" motion that she did not receive the April 30, 2008 Order denying her motion for reconsideration until August 13, 2008. Applying the earlier 7-day period, the time for granting relief under Rule 4(a)(6) expired on August 25, 2008. See Fed. R. App. P. 26. McNeill's August 28, 2008 motion is also untimely with respect to relief under Rule 4(a)(6). Bailey, 1994 WL 589680 at *1-2. Accordingly,

McNeill's motion and "corrected" motion to file an untimely application for appeal is hereby DENIED. McNeill's application and "corrected" application to proceed in forma pauperis, and request and "corrected" request for an automatic stay pending appeal, are hereby DENIED as MOOT.

SO ORDERED.

Dated: September 8, 2008

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
September 8, 2008, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk